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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Panasonic Corporation of North America¹

Serial No. 76414813

Morton Amster and Holly Pekowsky of Amster, Rothstein & Ebenstein LLP for Panasonic Corporation of North America.

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(Janice O'Lear, Managing Attorney).

Before Chapman, Bucher and Grendel,² Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On May 30, 2002, Matsushita Electric Corporation of America (later a change of name to Panasonic Corporation of North America) filed an application to register on the Supplemental Register the mark PUREFLAT for "television monitors" in International Class 9, based on applicant's

¹ The original applicant, Matsushita Electric Corporation of America (a Delaware corporation), changed its name to Panasonic Corporation of North America (a Delaware corporation). The change of name document has been recorded with the Assignment Branch of the USPTO. (Reel 3016, Frame 0418).

² Formerly known as Bottorff.

claimed date of first use and first use in commerce of October 26, 2000.

In the first Office action (dated October 8, 2002), the Examining Attorney refused registration of the mark on the Principal Register as merely descriptive of applicant's goods under Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1). In a subsequent Office action (prior to any written response by applicant) dated November 13, 2002, the Examining Attorney refused registration on the Supplemental Register under Section 2(e)(1) of the Trademark Act on the basis that the applied-for mark is generic and incapable of serving as a source identifier for applicant's goods.

The Examining Attorney later requested that the application be remanded to clarify that the refusal to register was based on Section 23 of the Trademark Act, 15 U.S.C. §1091. The Board granted the request for a remand in an order dated March 5, 2004, and a second Final Office action issued on August 10, 2004.

When the refusal to register the proposed mark on the Supplemental Register under Section 23 of the Trademark Act was made final, applicant appealed to the Board. Both

applicant and the Examining Attorney have filed briefs.³

Applicant did not request an oral hearing.

The issue before the Board is whether the term PUREFLAT is generic for applicant's identified goods "television monitors," and thus, is incapable of serving as a source identifier therefor and hence is unregistrable on the Supplemental Register.

The Examining Attorney's position is set forth as follows:

The word, PURE FLAT, designates the class or type of television monitors because PURE FLAT is the common descriptor of a key characteristic of applicant's flat screen television monitors. PUREFLAT refers to a type of television monitor having a PURE FLAT television screen.

...

The relevant public readily understands that PUREFLAT primarily refers to televisions with PURE FLAT television screens. (Brief, unnumbered page 4.)

³ Applicant attached Exhibits A-C to its brief, filed on February 16, 2005. These exhibits consist of over 150 pages of printouts of articles retrieved from a database and printouts of pages from websites. While some of these materials were previously made of record, several were not previously in the record, as acknowledged by applicant (reply brief, footnote 3.) The Examining Attorney stated she "will not address these excerpts." (Brief, unnumbered page 5.) The record should be complete prior to appeal pursuant to Trademark Rule 2.142(d). See also, TBMP §1203.02(e) (2d ed. rev. 2004). Thus, attaching new materials with the brief is an inappropriate and untimely submission of new evidence. Applicant did not specify which of these many pages of exhibit materials were previously in the record. Thus, the Board has not considered any of the materials attached to applicant's brief. Of course, any materials already in the record prior to the filing of applicant's brief have been considered.

During the examination process for this application, the Examining Attorney submitted (i) photocopies of several excerpted stories retrieved from the Nexis database relating to "pure flat" in relation to televisions; and (ii) printouts from websites on the Internet referring to "Pure Flat" televisions. Examples of the Nexis and Internet evidence are set forth below (emphasis added):

Headline: What's New Spotlight And Installation Products
...Digital Display Products. Sampo now has a new line of HDTVs with 27- and 32- inch **pure-flat**, progressive-scan monitors and a 32-inch **pure-flat**, widescreen monitor, as well as high-definition component video inputs and 1080i native resolution support. ... "Sound & Video Contractor," March 2001;

Headline: Television Sets Getting Flatter and Sharper
...The sets, which are to retail for \$1,699 for the 27-inch model and \$2,199 for the 30-inch, are part of Samsung's **Pure Flat** Progressive-Scan line.
"Pure Flat" refers to the viewing screen of the televisions which, unlike most picture tube screens, are perfectly flat, according to Samsung spokesman Jonathan Heit. ... "Dayton Daily News (Ohio)," April 24, 1999;

Headline: Schuyler County
...TV drawing to benefit YMCA
The Chemung County YMCA, at 425 Pennsylvania Ave. in Elmira, will hold a drawing at noon Wednesday for a 36-inch Toshiba **Pure Flat** television and a matching stand, valued at \$2000. ... "Star-Gazette (Elmira, NY)," December 16, 2003;

Headline: Sticker Shock -- In Reverse
...TVs on display at the show, which drew 2,283 exhibitors and 116,687 attendees from 128 countries.
...SVA's roster included a stunning 42-inch HDTV plasma screen, a series of LCD (liquid crystal display) monitors, ranging in size from 15 inches to 30 inches (measured diagonally), three models of **pure flat**-screen TVs, a DLP (digital light processing) rear-projection TV and a couple of angle flat-panel TVs. ... "The Oregonian," January 17, 2003;

Headline: Let's Get Real
...Many of those new homes have big windows and atriums that let in lots of light. That's not a favorable environment for front projectors, but direct-view and rear-projection TVs will do just fine. The move to **pure flat** screens has also resulted in some really clever product designs [look at Sharp's Aquos TV line] that have far more appeal to the eye than big, bulky tube-equipped RPTVs. ... "Sound & Video Contractor," January 2003;

Headline: Samsung's Digital TV Assembly
...Flat screen has been evolving technology for Samsung, starting with 27" flat tubes in 1996 and progressing to "**Pure Flat**" 27-32" models in 2000 that could handle 480p, but not 1080i. ... "Consumer Electronics," June 10, 2002;

Headline: Toshiba Delays PVR, But Readies Microdisplay Projection Set
...At same time, Toshiba unveiled line of 14 FST **Pure flat**-screen TVs, ranging from 14" to 36", making substantial push in category that it had planned to enter year ago. ... "Audio Week," July 2, 2001;

Headline: Providential Holdings Finds
Chinese Partner

...Products are exported to more than 100
countries throughout the world. Xococo
was the first company in China to develop
the 25- and 27-inch color televisions and
the first Chinese electronics
manufacturer to receive ISO9002
certification. The product line includes
Pure Flat TV and HDTV, computer, monitor,
and communication products. ... "Display
Development News," October 2003;

Headline: Perfect 10

...Our friends at SKY have given us 10
state-of-the-art widescreen TVs to give
away.

These LG 28ins **pure flat** Nicam Stereo
televisions come complete with Fastext,
text memory, sleep times, on-screen
display and picture-in-picture
facilities, ... "The Sun," September 19,
2003;

Headline: Toshiba Pushes the Positive
About New Partnership

...Both manufacturers make large, **pure**,
flat televising tubes, although the tubes
are designed differently. Matsushita is
also a major producer of tubes for
projection television sets... "Star-
Gazette (Elmira, NY)," October 6, 2002;

Yahoo! Shopping

Norcent 20" **Pure Flat**-Screen TV...

Panasonic CT-32HL43 32" 4:3 **Pure Flat**
HDTV-Ready...

Toshiba 32AF41 32" FST **Pure Flat** Screen
TV

...

Magnavox 9-inch **Pure Flat** TV/DVD Combo

...

SVA (E2139FQU) **Pure Flat** 20" Picture TV...
www.yahooshopping.com;

BizRate shopping search
Sylvania **Pure Flat** 6509DD TV/CR/DVD Combo
Panasonic **Pure Flat** CT36HX42 Regular TV
...
Toshiba **Pure Flat** 36HF72 Regular TV
...
JVC **Pure Flat** AV27F703 Regular TV
SVA **Pure Flat** E2139FQU Regular TV
...
www.bizrate.com;

Amazon.com
Daewoo DSC3470N Digital 34" **Pure Flat**
Screen HDTV 16:9 TV
...
Editorial Reviews
...
The 34-inch **Pure Flat** CRT screen is
configured in a widescreen, 16:9 aspect
ratio for optimal viewing...
www.amazon.com, and

Amazon.com
Toshiba MW20FM1 20" **Pure Flat** Screen TV-
DVD-VCR Combo
...
Editorial Reviews
...
Besides looking great, the set's **pure-
flat** tube eliminates unwanted reflections
from room light and affords a broader
viewing angle than conventional tubes. ...
www.amazon.com.

The Examining Attorney also initially submitted the first 20 "hits" of a Google search list. The probative value of this evidence will vary depending on the circumstances of the case. See *In re Fitch IBCA Inc.*, 64 USPQ2d 1058 (TTAB 2002). Here it is clear even from the minimal information shown on these "hits" that there are several entities which use "Pure Flat" to refer to their

television monitors. See for example, No. 3 --

"Toshiba24AF42 24" Pure Flat Television"; No. 11 -- "Sony KV24LS35 28 inch pure flat screen Widescreen TV"; No. 12 -- "Apex GT-15 Series - Pure Flat - Apex Televisions"; No. 14 -- "Sampo ... pure flat HDTV."

Applicant argues that the burden is on the Examining Attorney to establish that the term is generic for the involved goods, and the Office must establish genericness by clear evidence; that third-parties (competitors) do not need to use the term PUREFLAT to name their products, and, in fact, several competitors use the words "flat screen," "flat monitor" or "flat panel" to describe or name their television monitors; that "the phrase 'pure flat' is clearly used to describe characteristics of certain television screens, rather than to denote a genus of television screens, and therefore is at most a descriptive designation" (brief, p. 6); that the evidence submitted by the Examining Attorney includes references to applicant and because the evidence shows mixed results, the Office has not established genericness; and that doubt is resolved in applicant's favor, allowing registration of the mark on the Supplemental Register.

The USPTO bears the burden of proving that the proposed trademark is generic, and genericness must be

demonstrated through "clear evidence." See *In re Merrill Lynch, Pierce, Fenner, & Smith, Inc.*, 828 F.2d 1567, 4 USPQ2d 1141 (Fed. Cir. 1987); and *In re Analog Devices Inc.*, 6 USPQ2d 1808 (TTAB 1988), *aff'd*, *unpubl'd*, but appearing at 10 USPQ2d 1879 (Fed. Cir. 1989). The evidence of the relevant public's perception of a term may be acquired from any competent source, including newspapers, magazines, dictionaries, catalogs and other publications. See *Magic Wand Inc. v. RDB Inc.*, 940 F.2d 638, 19 USPQ2d 1551 (Fed. Cir. 1991); and *In re Leatherman Tool Group, Inc.*, 32 USPQ2d 1443 (TTAB 1994).

The test for determining whether a designation is generic, as applied to the goods or as used in connection with the services in an application, turns upon how the term is perceived by the relevant public. See *Loglan Institute Inc. v. Logical Language Group, Inc.*, 962 F.2d 1038, 22 USPQ2d 1531 (Fed. Cir. 1992). Determining whether an alleged mark is generic involves a two-step analysis: (1) what is the genus of the goods or services in question? and (2) is the term sought to be registered understood by the relevant public primarily to refer to that genus of goods or services? See *In re The American Fertility Society*, 188 F.3d 1341, 51 USPQ2d 1832 (Fed. Cir. 1999); and *H. Marvin Ginn Corporation v. International Association*

of Fire Chiefs, Inc., 782 F.2d 987, 228 USPQ 528 (Fed. Cir. 1986).

The genus of the goods involved herein is "television monitors." This is not disputed, although applicant argues the mark PUREFLAT describes a characteristic of certain TV screens, while the Examining Attorney contends the term is generic for a particular type of TV screen. We find this to be a distinction without a difference in this case, as explained later herein.

We turn then to the second Marvin Ginn question, namely, whether the term "PUREFLAT" is understood by the relevant public primarily to refer to either the type of TV monitor/screen or a key characteristic of certain TV monitors/screens.

The Examining Attorney's Internet and Nexis evidence shows that "pure flat" is utilized by numerous television manufacturers to refer to the monitor/screen used in their TVs. It is also clear that a "pure flat" monitor/screen is beneficial in that it increases viewing area and cuts down on reflected light. Thus, whether it is understood by consumers as referring to the beneficial characteristic of the TV monitor/screen or as the name of a type of TV monitor/screen, in any event, it is understood by consumers in a generic sense and not as applicant's trademark

indicating source in applicant. See *In re Sun Oil Company*, 426 F.2d 401, 165 USPQ 718 (CCPA 1970); and *In re National Patent Development Corporation*, 231 USPQ 823 (TTAB 1986).

This evidence (the Nexis and Internet evidence placed into the record by the Examining Attorney) regarding use of the words "pure flat," establishes that under either test, *American Fertility*, supra, or the compound word test of *In re Gould Paper Corp.*, 835 F.2d 1017, 5 USPQ2d 1110 (Fed. Cir. 1987), the term "pure flat" is generic of a television monitor and/or a key characteristic thereof.

The excerpted articles that the Examining Attorney obtained from the Nexis database indicate a progression in advanced display technologies for Samsung, for example, from "flat tubes in 1996 and progressing to "Pure Flat" ... models in 2000," the latter of "which, unlike most picture tube screens, are perfectly flat," according to a Samsung spokesperson.⁴ Similarly, at about the same time, Toshiba began "making substantial push in category [e.g., pure flat screen TVs] that it had planned to enter year ago."

(Emphasis added.) In the articles drawn from the Nexis database and the advertisements taken from the Internet,

⁴ Interestingly, this latter article quoting "Samsung spokesman Jonathan Heit," explicitly defining what the term "pure flat" means, appeared in the "Dayton Daily News (Ohio)" on April 24, 1999 -- eighteen months prior to applicant's claimed date of first use of its alleged mark, PUREFLAT.

several major manufacturers use the "pure flat" (or "Pure Flat" or "PureFlat") designation of a type of television monitor just as they use other terms denoting state-of-the-art display technologies, such as "progressive scan," "high-definition," and "widescreen." Thus, the relevant public will readily understand the term "PUREFLAT" primarily to refer to a type of TV monitor and/or the key characteristic thereof. See *In re Central Sprinkler Co.*, 49 USPQ2d 1194 (TTAB 1998); and *In re Conus Communications Co.*, 23 USPQ2d 1717 (TTAB 1992).

We are not persuaded by applicant's evidence which it asserts shows that its competitors and the media also use other terms for TV monitors, such as "flat panel," "flat screen" and "flat tv." The question is not whether there are other equally generic terms, but whether the applied-for mark is a generic term for the goods.

Moreover, applicant's argument in support of its obtaining a registration by emphasizing the fact that it uses the two words without a space between them is unpersuasive. A misspelling of a generic term or terms does not change the generic significance to the purchaser. See *Nupla Corp. v. IXL Manufacturing Co.*, 114 F.3d 191, 42 USPQ2d 1711 (Fed. Cir. 1997); *Micro Motion Inc. v. Danfoss A/S*, 49 USPQ2d 1628 (TTAB 1998); and *In re Stanbel Inc.*, 16

USPQ2d 1469 (TTAB 1990), aff'd unpub'd, but appearing at 20 USPQ2d 1319 (Fed. Cir. 1991). See also, 2 J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, §§12:38 and 12:39 (4th ed. 2005). Here the "misspelling" is applicant's deletion of the space between the two separate words "pure" and "flat." However, the term "pureflat" remains generic. See *In re Planalytics, Inc.*, 70 USPQ2d 1453 (TTAB 2004).

We find that the evidence of record establishes that applicant's proposed mark is generic and incapable of distinguishing applicant's goods from those of others.

Decision: The refusal to register on the Supplemental Register is affirmed.